

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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WAVERLY PROPERTIES, LLC,

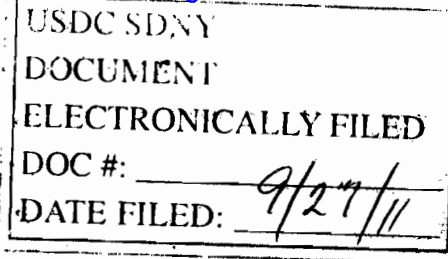
Plaintiff,

- against -

KMG WAVERLY, LLC et al.,

Defendants.  
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VICTOR MARRERO, United States District Judge.



09 Civ. 3940 (VM)

**DECISION AND ORDER**

**I. BACKGROUND**

Plaintiff Waverly Properties, LLC ("Waverly") brought this action alleging various claims under New York law for breach of contract, negligence, misrepresentation and consumer fraud. Waverly's complaint arises from defects in the construction of certain residential apartments it had contracted to purchase in a condominium building of which defendant KMG Waverly, LLC ("KMG") was the sponsor. Following extensive discovery, defendants -- individuals and entities involved as principals and/or other capacities in the transaction related to the units (collectively, "Defendants") -- moved for summary judgment.

By Order dated August 15, 2011, Magistrate Judge Frank Maas, to whom this matter had been referred for supervision of pretrial proceedings, issued a thorough and well-reasoned

Report and Recommendation (the "Report"), a copy of which is attached and incorporated herein, recommending that Defendants' motion be denied with respect to Waverly's eight common law claims and granted as to the ninth cause of action, which alleges violation of Section 349 of the New York General Business Law. Defendants filed timely objections to the Report challenging its findings and conclusions. For the reasons stated below, the Court adopts and incorporates herein the findings, analysis and recommendation of the Report in their entirety as the Court's ruling on Defendants' motion.

## II. STANDARD OF REVIEW

A district court evaluating a Magistrate Judge's report may adopt those portions of the report to which no "specific, written objection" is made, as long as the factual and legal bases supporting the findings and conclusions set forth in those sections are not clearly erroneous or contrary to law. Fed. R. Civ. P. 72(b); see also Thomas v. Arn, 474 U.S. 140, 149 (1985); Greene v. WCI Holding Corp., 956 F. Supp. 509, 513 (S.D.N.Y. 1997). "Where a party makes a 'specific written objection ... after being served with a copy of the [magistrate judge's] recommended disposition,' however, the district court is required to make a de novo determination regarding those parts of the report." Cespedes v. Coughlin,

956 F. Supp. 454, 463 (S.D.N.Y. 1997) (citing United States v. Raddatz, 447 U.S. 667, 676 (1980)); Fed. R. Civ. P. 72(b). The Court is not required to review any portion of a Magistrate Judge's report that is not the subject of an objection. See Thomas, 474 U.S. at 149. A district judge may accept, set aside, or modify, in whole or in part, the findings and recommendations of the Magistrate Judge as to such matters. See Fed. R. Civ. P. 72(b); DeLuca v. Lord, 858 F. Supp. 1330, 1345 (S.D.N.Y. 1994).

### III. DISCUSSION

Having conducted a de novo review of the full factual record in this litigation, including the pleadings, the parties' respective papers submitted in connection with Defendants' underlying motion for summary judgment, and Defendants' objections to the Report in this proceeding, as well as the Report and applicable legal authorities, the Court concludes that Defendants' motion for summary judgment as to Waverly's first eight causes of action should be denied, and granted as to the ninth. Accordingly, for substantially the reasons set forth in the Report, the Court adopts and incorporates herein the factual findings and legal analysis set forth in the Report in their entirety as the Court's ruling on Defendants' underlying motion for summary judgment.

**IV. ORDER**

For the reasons discussed above, it is hereby

**ORDERED** that the Report and Recommendation (the "Report") of Magistrate Judge Frank Maas dated August 15, 2011 (Docket No. 132) is adopted and incorporated in its entirety as the Court's ruling on the motion for summary judgment (Docket No. 116) filed by defendants (the "Defendants") in this action, and the objections (Docket No. 139) of Defendants are DENIED; and it is hereby

**ORDERED** that substantially for the reasons set forth in the Report the motion of Defendants herein is DENIED with regard to the first eight causes of action set forth in the complaint of plaintiff Waverly Properties, LLC herein and GRANTED with regard to the ninth cause of action; and it is finally;

**ORDERED** that the parties are directed to appear at the final pretrial conference on this matter on October 7, 2011 at 9:15 a.m.

**SO ORDERED.**

Dated: NEW YORK, NEW YORK  
27 September 2011

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

Victor Marrero  
U.S.D.J.